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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,524	10/23/2006	Derek I. Darley	22409-00247-US	4660
30678 7590 02/20/2009 CONNOLLY BOVE LODGE & HUTZ LLP 1875 EYE STREET, N.W. SUITE 1100 WASHINGTON, DC 20006				
EXAMINER				
BOCKELMAN, MARK				
ART UNIT		PAPER NUMBER		
3766				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/586,524

**Applicant(s)**

DARLEY ET AL.

**Examiner**

Mark W. Bockelman

**Art Unit**

3766

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-46 is/are pending in the application.
- 4a) Of the above claim(s) 40-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

Claims 40-46 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11-24-2008.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 20-24, 27, 30-34, 37 are rejected under 35 U.S.C. 102(e) as being anticipated by USPN 6,748,093 to Topholm.

Topholm teaches an electronic module 74 which includes a signal processor 9, a connector 81, a housing and processing circuitry that receives signals output by a microphone; and a protective case 1, 2 configured to interface with the connector 81, wherein the electronic module 74 is removably mountable within the case and is operable while mounted therein. (See Figs. 18, 23; col. 13, Ins. 27-38, 59-61; col. 14, Ins. 18-28).

The protective case includes a base member 1 and a cover member 2 which is matable to the base member to form a substantially fluid and dust-entry resistant enclosure (Fig. 18). The microphone 3 is mounted in the socket 81 which is part of the electronics module 74, and thus can be interpreted as being either an internal microphone if the entire electronic module 74 is considered to be the speech processor, or an external microphone if the signal processor 9 alone is considered to be the speech processor (col. 15, lns. 49-53, 59-61). The electronic module 74 is configured to be operably connected to a power supply 93 (col. 15, lns. 27-34).

Claims 20, 29, 30 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Berger USPN 4,347,956. Berger shows a speech processor 60 with microphone 66 and a cable connector 72, a case 24 with an orifice through which the cable extends through an orifice which is capable of being sealed with a grommet as would any orifice. To the extent applicant's specification supports a "grommet sealed orifice in the case" so does Berger. The speech processor is removable from, as well as operable in, the case.

Claims 20-24, 27, 30-34, 37 are rejected under 35 U.S.C. 102(e) as being anticipated by USPN 7,113,611 to Leedom et al.

In a first embodiment, Leedom teaches a speech processor module 36 housed together with an internal microphone 30, and removably mountable in a protective case 15 in which the speech processor module 36 is operably connected to a power supply

22. The speech processor module 36 and the protective case 15 may be mechanically or electrically (e.g., via battery 22) connected via respective connecting elements. (See Figs. 3A-3B, col. 9, ln. 65 through col. 10, ln. 30).

In a second embodiment, shown in Figs. 11-12, Leedom teaches a speech processor module 46 with a housing 59 and signal processing circuitry 28, a protective case comprising a base member 12 and cover member 36, a microphone 30 formed as part of the cover member 36 and thus external to the speech processor module 46, and a power supply 22. Each of the speech processor module 46 and the case 12, 36 have mutually connectable elements such that speech processor module 46 is removably mountable and operable within the case 12, 36. (See col. 13, lns. 39-42; col. 14, lns. 25-34). When mounted in the case 12, 36, the speech processor module 46 is operably connected to the power supply 22. When mated together, the base and cover members 12, 36 are substantially resistant to fluid and dust ingress.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 7,113,611 to Leedom et al.

Leedom teaches each feature of the claimed invention except that it does not specifically disclose electrical pin connectors on the speech processing module in connection with the embodiments discussed above. The embodiment shown in Fig. 5, however, discloses a speech processing module 36 which includes signal processing circuitry 28, a microphone 30, and electrical pin connectors 40, which are connected into the integrated case unit 12 via receptacles 42. (See col. 11, Ins. 35-41). As Leedom does not disclose specific types of connection elements in connection with the embodiments discussed above in the 102 rejection, it would have been obvious to incorporate the electrical pin connector arrangement of Fig. 5 into the embodiments of Figs. 3A, 3B, 11 and 12 to provide the same means of effective connection between the speech processing module 46 and the case 12, 36 as provided in the embodiment of Fig. 5.

Claim 26, 28, 36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 7,113,611 to Leedom et al. in view of USPN 7,123,733 to Borowsky et al.

Leedom teaches each feature of the claimed invention except for the limitation that the case prevents all fluid ingress when the cover is closed relative to the base member. Borowsky teaches providing a watertight film around the microphone opening (col. 4, Ins. 36-39). It would have been obvious to provide the watertight film of Borowsky over the opening of microphone 30 in the embodiments of Figs. 11 and 12 in Leedom, to prevent the penetration of moisture into the case and thereby extending the

life of the device. To have included a sheath (item 10 of Borowsky) for a liner with an opening serving as a gasket in the Leedom et al device would have been obvious to seal the components when in use.

***Response to Arguments***

Applicant's arguments filed 8-8-2008 have been fully considered but they are not persuasive. Applicant's claims are substantially the same as those addressed in the final office action dated 4-8-2008 with the exception that applicant has added some statements of intended use that are given little to no patentable weight in the absence of any structural differences. The speech processors in each of the pieces of applied art are capable of having the speech processors disconnected and placed in other devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark W. Bockelman whose telephone number is (571) 272-4941. The examiner can normally be reached on Monday - Friday 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Layno can be reached on (571) 272 -4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark W Bockelman/  
Primary Examiner, Art Unit 3766  
February 17, 2009